FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ FEB 21 2017 ★
LONG ISLAND OFFICE

RECEIVED
FEB 17 2017
SHVJ

Rosemary Ida Mergenthaler
32 Eastville Avenue
Sag Harbor, NY 11963
561-221-0281

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Rosemary Ida Mergenthaler *pro se* Appellant	)	
	)	
-against-	)	
	)	Index No: 17-00615 (JS)
	)	
Simon Harrison as agent for Robert	)	
Smithson and Lucile Smithson Appellee	)	
	)	

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Rosemary Ida Mergenthaler dated February 17, 2017 and the papers annexed thereto,

LET Macco & Stern, 2950 Expressway Dr. S # 109, Islandia, NY 11749, David Lee Miller, 3334 Noyac Road Sag Harbor, NY 11963 have be notified of this filing by mailing at the U.S. Post Office. Attorneys for the Appellee's Simon Harrison as agent for Robert Smithson and Lucile Smithson,

SHOW CAUSE BEFORE THIS COURT at the Courthouse thereof, Located at 100 Federal Plaza, Central Islip, NY on the ______day of ___________ 2017 at ________ at o'clock in the forenoon of the date, why an order should not be made and Equitable.

Staying the Motion of relief ordered on 02-13-2017

SUFFICIENT CAUSE THERFORE APPEARING, it is

ORDERED that the service of a copy of this order to show cause and the papers upon which it was made upon Macco & Stern, 2950 Expressway Dr. S # 109, Islandia, NY 11749, David Lee Miller, 3334 Noyac Road Sag Harbor, NY 11963 have be notified of this filing by mailing at the U.S. Post Office. They are the attorneys for the Appellee's Simon Harrison as agent for Robert Smithson and Lucile Smithson. February 17, 2017, shall be deemed sufficient service thereof, and

it is further:

ORDERED that opposition papers, if any, must be served by Personal service, U.S Postal Service or by mailing with proof of mailing at least seven (7) days prior to the return date herein; and it is further,

ORDERED that

Pending the hearing and determination of this motion and entry of an Order hereon, LET all proceedings on part of the respondent(s), or any Person acting on behalf of the respondent(s), or any person acting on behalf of the respondent(s) including the attorney(s) and agent(s) of the Respondents(s) and, if applicable, any marshal or Sheriff **BE STAYED.**

Dated: Central Islip, New York

______________, 2017

____
Judge

Rosemary Ida Mergenthaler
32 Eastville Avenue
Sag Harbor, NY 11963
561-221-0281

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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

Rosemary Ida Mergenthaler *pro se* Appellant)

-against-)

Index No: 17-00615 (JS)

Simon Harrison as agent for Robert Smithson and Lucile Smithson Appellee)

X

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

Rosemary Ida Mergenthaler, having been duly sworn hereby states as follows:

I am the Appellant in the above titled proceeding and make this affidavit in support of the Motion to Stay the Ordered Motion for Relief From the Automatic Stay. I have notified Macco & Stern, 2950 Expressway Dr. S # 109, Islandia, NY 11749, David Lee Miller, 3334 Noyac Road Sag Harbor, NY 11963 of this filing by mailing at the U.S. Post Office They are the attorneys for the Appellee's agent, Simon Harrison for Robert Smithson and Lucile Smithson. I have Submitted this Order to Show Cause by U.S. Post to United States District Court, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, NY 11722 via priority mail on February 18, 2001. The reason for mailing this document is because of a severe medical problem that needs immediate attention. I thank you for the courtesy of accepting this document.

0. Appellee filed his motion to list the stay on 12/6/2106 (docket 246). This called For a hearing on 01/11/2017. Papers in opposition were to be filed and received by 4:30 on 01-04-2017. (Docket 246).

1. The Affidavit of Service attested to by Carol Smith plainly shows that the mailing Date of an oversize envelope was send by the U.S. Postal Service as regular first Class mail. On 01/01/2017. (Exhibit 1) in an oversize envelopes usually requires additional time to reach the recipient, as I was told this at the Sag Harbor Post Office.

2. On the morning of 01/06/17 I checked my mail box early, as it was snowing. I checked it again on 01/07/2017 and again there was nothing from the Law Firm of Macco & Stern.

3. On the following day we had a major snow storm. On Monday the 9th of January my driveway was plowed. I then could see there was no mail delivery I learned the Post Office suspended deliveries that day

4. On Tuesday the 10th of January I had a mail delivery. There was a manilla envelope from Macco & Stern was there. (Exhibit 2) This was the first time I heard anything about their Motion in the Bankruptcy Court.

5. I am a nervous driver, the round trip to Central Islip is about 120 miles. The local roads were still very bad. I decided the prudent approach was to overnighted a letter to Judge Grossman, in a timely way, explaining the situation. (Exhibit 3), Docket (250)

6. The hearing was held on the 11th of January and Judge Grossman granted the The Order Lifting the Stay. He entered it on 01/13/2017 marked as **"unopposed"**.(Docket 251).

7. Between the hearing date and the date Judge Grossman prepared, signed and entered the order, there was the opportunity to read, review the timely docketed letter. There were copies of the received mailing and affidavit from the serving person that showed there was, in violation of the Docket posting, improper notice given and because of the inclement weatherI feel that a postponement or rescheduling of the hearing was in order.

8. The Appellee's Motion for Relief (Docket 246) contains obvious omission, misstatements of fact and a complete lack of material documentation to substantiate any findings. The case should be open for review. Justice Rana commented on several occasions that "she was uncomfortable with this resolution".

9. The main thrust of this appeal was to keep the stay in place for the above reasons Then file a motion with the Supreme Court of the State of New York, Appellate Term 2nd Judicial District. to seek resolution of the questions pertaining to the Sag Harbor Village Justice Court matters.

10.My legal advisers were out of town and without their input, I mistakenly filed an Order to Show Cause in the above New York Court. It was rejected. I was told there were conflicting issues between the State and Federal Court issues that had to be resolved before a 2nd Department review could go forward.

11.I was advised by a *pro se* adviser to go to the District Court with this Order to Show Cause. and have the District Court rule solely on the Appellee's motion to lift the "Stay". This would then allow a re-filing with the 2nd Department solely on the State Court matters.

12.I feel that because of the above undisputed facts I was precluded from making a fair and honest presentation in opposition to the Appellee's motion.

WHEREFORE, I request that the Court grant the following relief:

1. To rescind the "Lifting of the Stay Order" of Judge Grossman.
2. To refer this matter back to the New York State Courts for further consideration if possible to review and clarification of major issues.
3. And, any other issues that a review of the Appeal records may show to be appropriate.

Dated: February 17, 2017

Rosemary Ida Mergenthaler *pro se*

AFFIRMATION OF SERVICE

I Peter Mergenthaler, affirm under the penalty of perjury as follows:

On February 17, 2017, I served by first class U.S. Mail the true copies of the within document(s) upon

Simon Harrison, as agent for
Robert Simpson and
Lucile Simpson
1- A Bay Street
Sag Harbor, NY 11963

Macco & Stern LLP
2950 Expressway Dr. S # 109,
Islandia, NY 11749

David Lee Miller
3334 Noyac Road
Sag Harbor, NY 11963

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
--X
In re:

Case No. 15-72040 (REG)

Chapter 7

ROSEMARY IDA MERGENTHALER,

Debtor.
--X

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF SUFFOLK)s:-

Carol Smith, being duly sworn deposes that deponent is not a party to the above-captioned action, is over the age of 18 years and resides at West Islip, New York.

On January 3, 2017 deponent served the within NOTICE OF HEARING ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of the same, enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Peter Mergenthaler
32 Eastville Avenue
Sag Harbor, NY 11963

Rosemary Ida Mergenthaler
32 Eastville Avenue
Sag Harbor, NY 11963

/s/ Carol Smith
Carol Smith

Sworn to before me this
3rd day of January, 2017

/s/ Janine M. Zarrilli
Notary Public
Janine M. Zarrilli
Notary Public, State of New York
No. 01ZA5084708
Qualified in Nassau County
Commission Expires September 8, 2017

EXHIBIT 2

$ 002.83

MACCO & STERN, LLP
ATTORNEYS AT LAW
2950 EXPRESSWAY DRIVE SOUTH
SUITE 109
ISLANDIA, NEW YORK 11749

TO:
Rosemary Ida Mergenthaler
32 Eastville Ave
Sag Harbor, NY 11963

FIRST CLASS MAIL

EXHIBIT 3

Rosemary Mergenthaler
32 Eastville Avenue
Sag Harbor, NY 11963
rosiemer@gmail.com

1-10-17

Honorable Robert E. Grossman
U.S. Bankruptcy Court, Eastern District of New York
290 Federal Plaza
Central Islip, New York 11722

RECEIVED
2017 JAN 11 P 12:12
CLERK
US BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

Re: Index no. 15-72040

Dear Judge Grossman:

On Monday January 9, 2017 I was finally able to receive mail. I last checked my mail box on the morning of Friday January 6th. On Saturday the 7th it was also snowing and the mail box is inn a difficult place to empty in bad weather. It is behind a fence and large shielding evergreens. There is no need to explain the reason I was not able to check my mail box on Sunday, the snow storm day. I was able to get my car out of the driveway on Monday the 9th. I could see that the postman had not been there. If he was there would be deep ruts in the snow. I came back at approximately 1pm and there were still no tire ruts in front of the mail box.

This morning I went out early and saw that the postman had come. I opened the box and found the envelopes from Macco and Stern (attached). There was also one for my husband. I emailed his copy to him. This is the first document we have seen pertaining to this matter. I noticed that the answer date to this document was January 4, 2017 and the hearing date was for January 11th , tomorrow. I think, your honor, that this time line is not fair or reasonable.

I respectfully ask the Court to notify Macco and Stern and have them reissue these notices in an appropriate manner with a reasonable and fair answer and return date.

Respecctfully

Rosemary I Mergenthaler